

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **July 9, 2002**, Work **Session**

AGENDA ITEM NO.: 8

CONSENT:

REGULAR:

CLOSED SESSION: X
(Confidential)

ACTION:

INFORMATION: X

ITEM TITLE: **Holiday Inn Parking Deck Lease**

RECOMMENDATION: Authorize staff to finalize a lease with the Holiday Inn Select subject to the terms discussed in Closed Session.

SUMMARY: Holiday Inn Select leases the parking deck adjacent to the hotel from the City. The lease (attached) expires on July 31, 2002. Presently, the lease calls for the Holiday Inn to pay **\$8,333.33** per month. No payments have been made since last fall. The owners of the Holiday Inn have proposed new terms for the lease renewal (letter attached) which would include repayment of the rent that is currently in arrears, The reduced payment is suggested for two reasons; it is more affordable given the cash flow situation of the hotel, and debt service on the parking deck has been paid off, leaving the City with little costs on the facility other than the capital repairs that are scheduled for this year. All operating costs for the facility will continue to be paid for by the Holiday Inn.

PRIOR ACTION(S): N/A

FISCAL IMPACT: Revenues of \$4,200 per month plus repayment of rent currently in arrears,

CONTACT(S): Kimball Payne

ATTACHMENT(S): Current Lease
Proposal from the Holiday Inn Select

REVIEWED BY:



April 19, 2002

Mr. Kim Payne
City Manager
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

Dear Kim,

First, let me thank you again for the consideration the city has shown for our hotel over this very difficult time. Your willingness to work with us has been extremely helpful and critical to the long-term viability of the hotel.

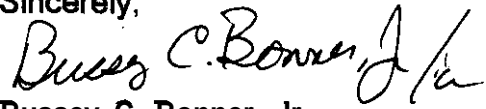
I would like to offer you the following proposal for the continuation of the parking lot lease:

- Enter into a new, 60-month lease, with a lease payment of \$4,200 per month. The basic responsibilities of the parties that are present in the current lease would be embodied in the new lease.
- On a quarterly basis, additional rent would be paid equal to the operating profit of the parking lot for the preceding quarter. We need to work out a definition of operating profit, but basically it would be the revenue from the operation of the parking lot, less direct operating expenses (labor, supplies, utilities, etc.). However, included in the direct operating expenses would be the amortization of the arrearage as outlined below.
- We estimate that by June 30, 2002, we will be in arrears on the current lease in the amount of \$75,000. We propose to amortize this amount over 60 months in the amount of \$1,415 per month. This amount includes the amortization of the \$75,000 plus interest at the rate of 5% compounded monthly.

RECEIVED
APR 23 2002
COUNCIL/MANAGER
OFFICES

Thank you again for your help and indulgence. If you have any questions regarding this proposal, I can be reached at 904-273-2450 and Barry can be reached at 404-843-0941.

Sincerely,

A handwritten signature in cursive script that reads "Bussey C. Bonner, Jr." followed by a stylized flourish.

Bussey C. Bonner, Jr.
President
Hotel Associates, Inc.

THIS LEASE AGREEMENT, entered into this 1st day of September, 1997, by and between the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as "City", and HOTEL ASSOCIATES, INC., a Virginia corporation, hereinafter referred to as the "Lessee."

WHEREAS, the City is the owner of a certain off-street parking facility known as the Municipal Parking Facility which is located in the 500 block of Main Street and adjacent to the Holiday Inn Select Hotel.

WHEREAS, the Lessee is engaged in the business of managing and operating a hotel facility within the City of Lynchburg and is desirous of managing and operating the Municipal Parking Facility and the City is willing to lease the parking facility to the Lessee in accordance with the terms hereinafter set forth in this Agreement of Lease, hereinafter referred to as the "Lease."

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto do **mutually** agree as follows, to-wit:

ARTICLE I - PREMISES

The City hereby demises, leases and rents unto the Lessee, and the Lessee hereby takes, accepts and rents from the City the Municipal Parking Facility located in the 500 block of Main Street and adjacent to the Holiday Inn Select Hotel, hereinafter referred to as the "Parking Facility" or the "Premises." Title to the leased premises during the term of this lease shall remain in the City.

ARTICLE II - TERM

The term of this Lease shall be for a period of three (3) years beginning on the 1st day of September 1997 and ending on the 31st day of ^{August}~~July~~ 2000. At the end of the three (3) year term of this Lease, the City shall have the option to extend the Lease for an additional two (2) year period upon the modification of such terms and conditions herein as the City and Lessee agree are appropriate.

ARTICLE III - RENTAL AND FEES

A. The Lessee agrees to pay the City, at such places as the City may designate, for the use of the premises, facilities and rights granted hereunder, the sum of \$100,000 per year, payable in equal consecutive monthly installments of \$8,333.33 per month. The first monthly payment shall be due and payable upon execution of the Lease and each succeeding monthly payment thereafter shall be paid on or before the 1st day of each succeeding month thereafter throughout the term of this Lease. Notice and demand for such rent is expressly waived. If the City exercises its option to extend the Lease for an additional two-year period, the Lessee will pay the City an amount agreed to by the City and Lessee during such two-year period, payable in equal consecutive monthly installments.

B. If any payment of rent shall not be paid within ten (10) days of the due date, the Lessee shall pay a ten percent (10%) late penalty on the amount of such delinquent payment, which penalty shall at once become due and collectable. Also, interest at a rate equal to the prime lending rate as quoted in the Wall Street Journal on the due date for such rent shall be paid and collected upon the delinquent rent and the applicable penalties. Such interest shall begin on the day following the due day for such rent and all interest shall be calculated on a 365-day year. In the event it becomes necessary for the City to initiate legal proceedings to collect

any of the rents and fees payable under this Lease, the Lessee agrees to pay all reasonable and necessary expenses incurred by the City in such legal proceedings, including court costs and reasonable attorneys' fees. Further, the failure of the Lessee to timely pay the rent and fees payable under the Lease is grounds for termination of the Lease in accordance with the provisions of "Article XVI Cancellation by City" hereof.

ARTICLE IV - USE OF PREMISES

The premises shall be used by the Lessee for the sole purpose of supplying off-street parking for motor vehicles and the charging of a fee therefor.

ARTICLE V - CHARGES AND FEES

The parking fees and rates the Lessee may charge for the rental of parking spaces in the Parking Facility shall be in accordance with the following schedule:

RATES:

- \$ 0.75 For each half hour
- \$ 3.00 Maximum per day for a 24-hour period
- \$40.00 Per month (no more than 100 spaces in the Parking Facility shall be available for rental as monthly rental spaces, the remaining parking spaces in the Parking Facility will be rented on an hourly or daily basis.

The parking rates set forth above may be increased only with the prior written approval of the City. Said fees and rates shall be changed only after the City in its sole discretion determines that appropriate studies demonstrate a need for such changes.

ARTICLE VI - HOURS OF OPERATION

The Lessee shall operate the Parking Facility and keep the Premises, open for business 16 hours

per day during the week with flexible hours during the weekends. The hours of operation of the Parking Facility may be modified depending upon the need of the public for such parking facilities. The failure of the City and the Lessee to agree on suitable hours of operation shall be grounds for the immediate termination of the Lease.

ARTICLE VII - MAINTENANCE

It shall be the duty of the Lessee at its sole cost and expense to keep and maintain the Premises, including the parking ramp, sidewalks and the shrubbery and landscaped areas surrounding the Parking Facility, and all of the air conditioning, heating, plumbing, electrical and other equipment and apparatus therein in substantially the same order and repair as at the inception of this Lease, reasonable wear and tear excepted, provided, however, that the City shall, as it becomes necessary for the preservation of the Premises, maintain and make all repairs and replacements to the structural supporting frame of the Parking Facility, excluding door screens and glass. Other than as specifically set forth herein the City shall have no obligation to make repairs to or maintain the Parking Facility.

The City shall have the right to inspect the premises and prescribe a program of preventative maintenance in order to keep the premises in good order and repair. The City also reserves the right to inspect the premises and to prepare a list of needed repairs. The Lessee at its sole cost and expense shall implement the preventative maintenance program and make the needed repairs identified by the City. If the Lessee fails to implement the provenetative maintenace program or to make the needed repairs the City shall have the right to either (a) cancel this Lease Agreement as provided in Article XV - Cancellation by City or (b) enter on the premises and perform the preventative maintenance or make the needed repairs, the cost of which will be the responsiblility of the Lessee.

The Lessee at its sole cost and expense shall keep the Parking Facility, including the parking

ramp, sidewalks and landscaped areas around the Parking Facility, in a clean and sanitary condition, including the removal of snow and ice in the winter, grass mowing, trimming of shrubbery, pruning and mulching, and will remove all garbage, debris and trash from the Premises on a daily basis. The Lessee's maintenance shall include the replacement of all light bulbs and the maintenance and repair of all signs used by the Lessee in the Parking Facility. For the purpose of performing its responsibilities hereunder, the City shall have the right to enter upon the Premises at such times as the City in its sole discretion deems necessary, including the right to store on the Premises the parts, equipment and materials necessary to perform such responsibilities.

ARTICLE VIII • ADDITIONS AND ALTERATIONS

The Lessee shall have the right, during the term of this Lease, to make alterations, attach fixtures and erect additions on the Premises upon the prior written approval of the City. At the end of the Lease, such alterations, fixtures and additions shall become the property of the City and may not be removed from the Premises without the prior written approval of the City.

ARTICLE IX • UTILITIES

The Lessee shall pay for all heating, sewer, gas, water, electricity, telephone and other utility services which may arise from the Lessee's use of the Premises, and if required by the utility service as a condition for said services, the Lessee at its sole cost and expense will install, maintain, relocate and pay for standard metering devices for the measuring of such services.

ARTICLE X- SECURITY

The Lessee will be responsible for providing whatever security it deems necessary for the operation of the Parking Facility.

ARTICLE XI • RULES AND REGULATIONS

The Lessee covenants and agrees to observe all reasonable rules and regulations promulgated from time to time by the City concerning the conduct of and operation of the Parking Facility. The City agrees that, except in cases of emergency, it will give notice to the Lessee of all such rules and regulations adopted by it at least thirty (30) days before the Lessee shall be required to comply therewith.

The Lessee shall comply with all federal, state, and local laws and ordinances, governmental rules, regulations and orders applicable to the operation of the Parking Facility. The Lessee shall, for the City's information, deliver to the City promptly, a true copy of any notice, warning, summons, or other legal process for the enforcement of any such laws, ordinances, rules, regulations or orders. The Lessee shall indemnify, hold the City harmless and defend the City from and against any and all claims, actions, damages, liabilities, fines, penalties, costs and expenses suffered or incurred by the City as a result of Lessee's noncompliance with applicable laws, ordinances, resolution or regulations. The Lessee shall have such time within which to comply with the aforementioned laws, ordinances, rules and regulations as the authorities enforcing the same shall allow.

ARTICLE XII - INSPECTION

The City, its agents and employees, shall have the right to enter onto the Premises at all reasonable times in order to determine that the Lessee has complied with and is complying with the terms or conditions of this agreement and in order to perform maintenance and make repairs and replacements to the Premises.

ARTICLE XIII - RECORDS

The Lessee shall keep true and complete records and accounts of all gross receipts and business transacted in the operation of the Parking Facility. Upon request from the City, the Lessee will furnish

the City with copies of such records and accounts and a statement of the annual gross receipts of the Parking Facility. Also, upon request of the City, the Lessee will furnish the City with information concerning the use of the Parking Facility by the general public in order that the City can adequately plan for the future parking needs of the City and its citizens.

ARTICLE XIV • DAMAGE OR DESTRUCTION OF LEASED PREMISES

If the Premises shall be partially damaged by fire, the elements, public enemy or other casualty so as to affect the Lessee's use of the space therein, but not render it untenable, the same shall be repaired with due diligence by the City at its own cost and expense, unless such damage was caused by the negligent or willful acts or omissions of the Lessee, its employees, agents or customers that it allows to be on the premises. If damage shall be so extensive as to render untenable the Lessee's use of the Premises, but be capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the City at its own cost and expense, and the rent payable hereunder shall be proportionately paid up to the time of such damage and therefore, shall cease until such time as said Premises shall be fully restored. In any case, where the Premises are completely destroyed by fire, the elements, the public enemy, or other casualty or are so damaged that it will be or does remain untenable for more than thirty (30) days, then, at the option of the City, either (1) the City shall repair and reconstruct said Premises with due diligence at its own cost and expense and the rent payable hereunder with respect to the Lessee's use of the Premises shall be proportionately paid up to the time of such damage or destruction and shall henceforth cease until such time as said Premises shall be fully restored, or (2) the City shall notify the Lessee within ninety (90) days of the time of such damage or destruction that the City does not propose to restore the Premises, in which case, the City shall give the lessee notice of its intention to cancel this Lease, in its entirety without any further liability of the City to the Lessee, as of the date of such damage or destruction.

The Lessee shall be responsible for any damage that it, its employees, agents or customers that it allows to be on the Premises may cause to the premises or any equipment or property the City has on the premises.

The City shall not be liable for any damage to or loss of any of the Lessee's property or the property of its agents, employees or customers which is brought onto the premises, regardless of how such damage or loss may occur. It is expressly agreed and understood that the Lessee, its agents, employees and customers in placing property in and on the premises, do so at their own risk.

ARTICLE XV • CANCELLATION BY CITY

The City may cancel this Lease, without forfeiture, waiver, or release of the City's right to any sum of money due or to become due under the provisions of this Lease, upon or after the happening of any one of the following events:

- (A) The filing by the Lessee of a voluntary petition in bankruptcy.
- (B) The institution of bankruptcy proceedings against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings.
- (C) The taking by a court of competent jurisdiction of the Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.
- (D) The appointment of a receiver of the Lessee's assets.
- (E) The divestiture of the Lessee's estate herein by other operation of law.
- (F) Voluntary abandonment of the Lessee of its activities or operating and managing the Parking Facility.
- (G) The default by the Lessee in the performance or non-performance of any covenant or agreement herein required to be performed by or required not to be performed by the Lessee

and the failure of the Lessee to remedy such defaults within a period of fifteen (15) days after receipt from the City of written notice to remedy the same.

- (H) The assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Parking Facility, or any substantial part or parts thereof.
- (I) Any assignment made by the Lessee for benefit of its creditors.
- (J) The failure of the Lessee to pay in full all of said rentals, fees or other charges provided for in this Lease within fifteen (15) days after receipt of written notice from the City, shall be grounds for the immediate termination of this Lease. At the end of the fifteen (15) day period, the City may immediately declare the Lease terminated without further notice to the Lessee.

No waiver of default by the City of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee shall be construed to be or act as a waiver of any subsequent default of any terms, conditions or covenants herein contained to be performed, kept or observed by the Lessee. The acceptance of rent or the performance of all or any part of this Lease by the City for or during any period or periods after default of any terms, covenants or conditions herein contained to be performed, kept or observed by the Lessee, shall not be deemed a waiver of any rights on the part of the City to cancel this Lease for failure to so perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept or observed by the Lessee.

ARTICLE XVI - SURRENDER OF POSSESSION

Upon the expiration and termination of this Lease, the Lessee's authority to use the Premises, rights and facilities herein granted shall cease, and Lessee shall, upon such expiration or termination, promptly and in good condition, surrender the same to the City ordinary wear and tear excepted.

ARTICLE XVII - INDEMNITY AND INSURANCE

The Lessee shall indemnify and hold harmless and assume the defense of the City, its employees, officers and agents, from and against any and all claims, liabilities, judgments, costs, causes of action, damages and expenses of any nature whatsoever, and shall pay all attorneys' fees, court costs and other costs incurred in defending such claims, which may accrue against, be charged to, be recovered from or sought to be recovered from the City, its employees, officers or agents by reason of or on account of damage to the property of, injury to or death of any person arising from the Lessee's use of the Premises as an off-street parking facility, regardless of whether or not such property damage, personal injury or death results from the actions of the Lessee's employees and agents or results from the acts of any other person whatsoever, whether or not such persons are subject to the Lessee's control. In order to effect the same, the Lessee agrees to maintain and pay for a public liability insurance policy on the Premises in at least the amount of \$5,000,000 against general public liability for injuries to or death of persons or damages to property in or about the Premises, Such insurance policy shall name the City, its officers, employees and agents as insured parties and shall include or be endorsed to include the contractual liability assumed by the Lessee under the indemnity agreement contained in this paragraph. The Lessee shall deliver to the City a copy of said insurance policy or certificate showing the same to be in full force and effect before occupying the Premises. The insurance policy or certificate shall contain provisions providing that the City shall be given thirty (30) days written notice prior to any cancellation or reduction in the required coverage. The insurance required hereunder shall be primary, and any insurance or self-insurance maintained by the City shall be in excess of and shall not contribute with any insurance provided under this Agreement.

Any deductibles of self-insured retentions applicable to required coverages shall be paid by the Lessee

and the City shall not be required to participate therewith. All rights of subrogation against the City shall be waived.

The failure of the Lessee to pay all insurance premiums when due and payable shall be grounds for the immediate termination of this Agreement by the City, any contrary provisions contained in Article XV - CANCELLATION BY CITY notwithstanding. The Lessee's obligation to the City hereunder shall not be limited to the amount of such insurance coverage and shall survive the termination or expiration of this Agreement.

The City shall obtain property insurance on the Premises by adding it to the insurance policy the City has in force to cover damages to other City buildings and the City shall be the sole beneficiary of such insurance.

ARTICLE XVIII -NOTICES

Notice to the Lessee, provided for herein, shall be sufficient if sent by registered mail, postage prepaid, addressed to the Owner, Hotel Associates, 601 Main Street, Lynchburg, VA 24505. Notice to the City, provided for herein shall sufficient if sent by registered mail, postage prepaid, addressed to the City Manager, City Hall, P. O. Box 60, Lynchburg, VA 24505.

ARTICLE XIX • GENERAL PROVISIONS

A. Major repairs, rebuilding or expansion may take place during the term of this Lease and the Lessee accepts this Lease subject to any inconvenience or loss of use of said Premises or any part thereof which may become necessary because of said repairs, construction or expansion. However, should such repairs, rebuilding or expansion render a portion of the leased Premises untenable, the rental rate shall be proportionately abated according to the ratio of the untenable property to the leased Premises.

B. Marginal headings contained in this Lease are for convenience only and shall not be considered to amplify, relate, modify or otherwise affect any of the terms, provisions or conditions of this Lease.

C. In the event that any provision of this Lease shall be construed to be invalid or unenforceable, then the remaining portions shall remain in full force and effect.

D. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

E. It is expressly understood that there shall not be any duty upon the City under this Lease to remove ice or snow from the Premises and that it is the sole responsibility of the Lessee to remove ice and snow from the Premises.

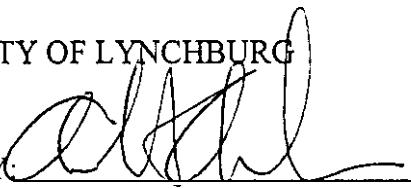
F. The City shall not be liable for any loss of revenue to the Lessee resulting from the City's acts, or omissions in the maintenance and operation of the Parking Facility.

G. The Lessee shall not at any time assign or sublet this Lease or any portion thereof without the prior consent in writing of the City.

H. The Lessee does hereby covenant and agree that no person on the grounds of race, sex, color or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Parking Facility. Further, the Lessee agrees that it will not discriminate against and will make all reasonable efforts to accommodate persons with disabilities as required by the Americans with Disabilities Act.

IN TESTIMONY WHEREOF the City of Lynchburg has caused its name to be hereunto subscribed by Charles F. Church, its City Manager, and its seal affixed and attested by Patricia W. Kost, its Clerk of Council; and Hotel Associates, Inc. has caused its name to be hereunto subscribed by

its president, Richard P. Keeler, and its seal affixed and attested by its Secretary, all as of the day and year first above written.

CITY OF LYNCHBURG
BY: 
Charles F. Chruch
City Manager

ATTEST: Patricia W. Kost
Patricia W. Kost
Clerk of Council

HOTEL ASSOCIATES, INC.

BY: Richard P. Keeler
Richard P. Keeler
President

SEAL

ATTEST: Richard P. Keeler
SECRETARY

COMMONWEALTH OF VIRGINIA,

CITY OF LYNCHBURG, to-wit:

The foregoing document was acknowledged before me this 18 day of September
1997, by CHARLES F. CHURCH and PATRICIA W. KOST, City Manager and Clerk of
Council, respectively, for the CITY OF LYNCHBURG.

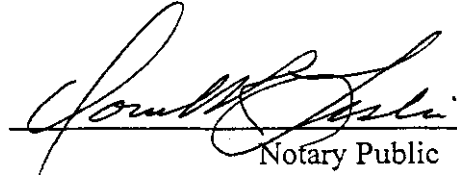
Robert Campbell
Notary Public

My commission expires: April 10, 2000

COMMONWEALTH OF VIRGINIA,

CITY OF LYNCHBURG, to-wit:

The foregoing document was acknowledged before me this 3 day of September, 1997,
by RICHARD P. KEELER, and Frances R. Keeler, President and Secretary, respectively,
for HOTEL ASSOCIATES, INC.



Notary Public

My commission expires: 5-31-01